



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0040]

RIN 1625-AA08

Special Local Regulation; Bonita Tideway, Brigantine, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the navigable waters of the Bonita Tideway near Brigantine, NJ. This action is needed to provide for the safety of life on these navigable waters during a rowing regatta on April 1, 2023, and April 2, 2023. This rule prohibits persons and vessels from being in the regulated area during the enforcement period unless authorized entry by the Captain of the Port (COTP), Delaware Bay, or a designated representative.

DATES: This rule is effective from 4 p.m. on April 1, 2023, through 12:30 p.m. on April 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0040 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Dylan Caikowski, Waterways Management Division, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4814, email SecDelBayWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 19, 2022, Stockton University notified the Coast Guard that it will be hosting a collegiate rowing regatta amongst six universities on April 1, 2023, and April 2, 2023. The rowing regatta will be held in Bonita Tideway in Brigantine, NJ, between 34th Street and Brigantine Boulevard and the Brigantine Yacht Club. In response, on January 27, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Bonita Tideway, Brigantine, NJ (88 FR 5289). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this rowing regatta. We received no comments during the comment period, which ended February 27, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the special local regulation needs to be in effect by April 1, 2023 to ensure the safety of participants and waterway users before, during, and after the scheduled rowing regatta.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP has determined that the rowing regatta could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death from near or actual collisions with non-participant vessels traversing through the regulated area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 27, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation from 4 p.m. on April 1, 2023, until 12:30 p.m. on April 2, 2023. The special local regulation will be enforced from 4 p.m. to 6:30 p.m. on April 1, 2023, and from 8:30 a.m. to 12:30 p.m. on April 2, 2023. The regulated area covers all navigable waters of Bonita Tideway in Brigantine, NJ, within a polygon bounded by the following: originating on the northern portion at approximate position latitude 39°24'33" N., longitude 074°22'28"W.; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24'22" N., longitude 074°22'49"W.; thence southwest along the shoreline to latitude 39°23'49" N., longitude 074°23'33"W.; thence across the Bonita Tideway to the shoreline at latitude 39°23'43" N., longitude 074°23'33"W.; thence north along the shoreline to the point of origin. The duration of the zone is intended to ensure the safety of participants and waterway users before, during, and after the scheduled rowing regatta. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant

regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Bonita Tideway. Vessels will be able to transit the regulated area during the enforcement period as directed by the Event Patrol Commander (PATCOM) or official patrol vessel.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 7 hours over 2 days that will prohibit or restrict entry within the regulated area during a rowing regatta. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS.

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T599-0040 to read as follows:

§ 100.T599-0040 Special Local Regulation; Bonita Tideway, Brigantine, NJ.

(a) *Regulated area.* All navigable waters of the Bonita Tideway in Brigantine, NJ, within the polygon bounded by the following: originating on the northern portion at approximate position latitude 39°24'33" N., longitude 074°22'28"W.; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24'22" N., longitude 074°22'49"W.; thence southwest along the shoreline to latitude 39°23'49" N., longitude 074°23'33"W.; thence across the Bonita Tideway to the shoreline at latitude 39°23'43" N., longitude 074°23'33"W.; thence north along the shoreline to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

Captain of the Port Representative or COTP Representative means a commissioned, warrant, or petty officer of the Coast Guard designated by name by the Captain of the Port to verify an event's compliance with the conditions of its approved permit.

Event Patrol Commander or Event PATCOM means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

Non-participant means a person or a vessel not registered with the event sponsor either as a participant or an official patrol vessel.

Official patrol vessel or official patrol means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

Participant means any person or vessel registered with the event sponsor as participating in the event or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Patrol of the marine event.* The COTP may assign one or more official patrol vessels, as described in § 100.40, to the regulated event. The Event PATCOM will be designated to oversee the patrol. The patrol vessel and the Event PATCOM may be contacted on VHF-FM Channel 16. The Event PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property.

(d) *Special local regulations.* (1) Controls on vessel movement. The Event PATCOM or official patrol vessel may forbid and control the movement of all persons and vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, the person or vessel being hailed must immediately comply with all directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Directions, instructions, and minimum speed necessary.

(i) The operator of a vessel in the regulated area must stop the vessel immediately when directed to do so by an official patrol vessel and then proceed only as directed.

(ii) A person or vessel must comply with all instructions of the Event PATCOM or official patrol vessel.

(iii) A non-participant must contact the Event PATCOM or an official patrol vessel to request permission to either enter or pass through the regulated area. If permission is granted, the non-participant may enter or pass directly through the regulated area as instructed by the Event PATCOM or official patrol vessel at a minimum speed necessary to maintain a safe course that minimizes wake and without loitering.

(3) Postponement or cancellation. The COTP, or Event PATCOM may postpone

or cancel a marine event at any time if, in the COTP's sole discretion, the COTP determines that cancellation is necessary for the protection of life or property.

(e) *Enforcement periods.* This section is subject to enforcement from 4 p.m. to 6:30 p.m. on April 1, 2023, and from 8:30 a.m. to 12:30 p.m. on April 2, 2023.

Dated: March 21, 2023.

Jonathan D. Theel,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.
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